

**Draft Implementing Legislation for the United States-Chile Free
Trade Agreement**

1 **TITLE IV—TEMPORARY ENTRY**
2 **OF BUSINESS PERSONS.**

3 **SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.**

4 Upon a basis of reciprocity secured by the Agree-
5 ment, an alien who is a national of Chile (and any spouse
6 or child (as defined in section 101(b)(1) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1101(b)(1)) of such
8 alien, if accompanying or following to join the alien) may,
9 if otherwise eligible for a visa and if otherwise admissible
10 into the United States under the Immigration and Nation-
11 ality Act (8 U.S.C. 1101 et seq.), be considered to be clas-
12 sifiable as a nonimmigrant under section 101(a)(15)(E)
13 of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely
14 for a purpose specified in clause (i) or (ii) of such section
15 101(a)(15)(E). For purposes of this section, the term “na-
16 tional” has the meaning given such term in article 14.9
17 of the Agreement.

18 **SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTES-**
19 **TATIONS.**

20 (a) NONIMMIGRANT PROFESSIONALS.—

1 (1) DEFINITIONS.—Section 101(a)(15) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1101(a)(15)) is amended—

4 (A) by striking “or” at the end of subpara-
5 graph (U);

6 (B) by striking the period at the end of
7 subparagraph (V) and inserting “; or”; and

8 (C) by adding at the end the following:

9 “(W)(i) subject to section 212(t), an alien—

10 “(I) who is entitled to enter the United
11 States under and in pursuance of the provisions
12 of an agreement listed in section 214(g)(8)(A);

13 “(II) who is engaged in a specialty occupa-
14 tion requiring—

15 “(aa) theoretical and practical appli-
16 cation of a body of specialized knowledge;
17 and

18 “(bb) attainment of a bachelor’s or
19 higher degree in the specific specialty (or
20 the equivalent of such a degree) as a min-
21 imum for entry into the occupation in the
22 United States; and

23 “(III) with respect to whom the Secretary
24 of Labor determines and certifies to the Sec-
25 retary of Homeland Security and the Secretary

1 of State that the intending employer has filed
2 with the Secretary of Labor an attestation
3 under section 212(t)(1); and

4 “(ii) the alien spouse and children (as defined
5 in subsection (b)(1)) of an alien described in clause
6 (i), if accompanying or following to join such alien.”.

7 (2) ADMISSION OF NONIMMIGRANTS.—Section
8 214(g) of the Immigration and Nationality Act (8
9 U.S.C. 1184(g)) is amended by adding at the end
10 the following:

11 “(8)(A) The agreement referred to in section
12 101(a)(15)(W)(i)(I) is the United States-Chile Free Trade
13 Agreement.

14 “(B) The Secretary of Homeland Security shall es-
15 tablish annual numerical limits on approvals of initial ap-
16 plications by aliens for admission under section
17 101(a)(15)(W)(i), which shall not exceed 1,400 for nation-
18 als of Chile. For purposes of this subparagraph, the term
19 ‘national’ has the meaning given such term in article 14.9
20 of the United States-Chile Free Trade Agreement.

21 “(C) The period of authorized admission as a non-
22 immigrant under section 101(a)(15)(W) shall be 1 year,
23 and may be extended, but only in 1-year increments.”.

1 (b) LABOR ATTESTATIONS.—Section 212 of the Im-
2 migration and Nationality Act (8 U.S.C. 1182) is
3 amended—

4 (1) by redesignating the subsection (p) added
5 by section 1505(f) of Public Law 106–386 (114
6 Stat. 1526) as subsection (s); and

7 (2) by adding at the end the following:

8 “(t)(1) No alien may be admitted or provided status
9 as a nonimmigrant under section 101(a)(15)(W) in an oc-
10 cupational classification unless the employer has filed with
11 the Secretary of Labor an attestation stating the fol-
12 lowing:

13 “(A) The employer—

14 “(i) is offering and will offer during the
15 period of authorized employment to aliens ad-
16 mitted or provided status under section
17 101(a)(15)(W) wages that are at least—

18 “(I) the actual wage level paid by the
19 employer to all other individuals with simi-
20 lar experience and qualifications for the
21 specific employment in question; or

22 “(II) the prevailing wage level for the
23 occupational classification in the area of
24 employment,

1 whichever is greater, based on the best informa-
2 tion available as of the time of filing the attes-
3 tation; and

4 “(ii) will provide working conditions for
5 such a nonimmigrant that will not adversely af-
6 fect the working conditions of workers similarly
7 employed.

8 “(B) There is not a strike or lockout in the
9 course of a labor dispute in the occupational classi-
10 fication at the place of employment.

11 “(C) The employer, at the time of filing the
12 attestation—

13 “(i) has provided notice of the filing under
14 this paragraph to the bargaining representative
15 (if any) of the employer’s employees in the oc-
16 cupational classification and area for which
17 aliens are sought; or

18 “(ii) if there is no such bargaining rep-
19 resentative, has provided notice of filing in the
20 occupational classification through such meth-
21 ods as physical posting in conspicuous locations
22 at the place of employment or electronic notifi-
23 cation to employees in the occupational classi-
24 fication for which nonimmigrants under section
25 101(a)(15)(W) are sought.

1 “(D) A specification of the number of workers
2 sought, the occupational classification in which the
3 workers will be employed, and wage rate and condi-
4 tions under which they will be employed.

5 “(2)(A) The employer shall make available for public
6 examination, within one working day after the date on
7 which an attestation under this subsection is filed, at the
8 employer’s principal place of business or worksite, a copy
9 of each such attestation (and such accompanying docu-
10 ments as are necessary).

11 “(B)(i) The Secretary of Labor shall compile, on a
12 current basis, a list (by employer and by occupational clas-
13 sification) of the attestations filed under this subsection.
14 Such list shall include, with respect to each attestation,
15 the wage rate, number of aliens sought, period of intended
16 employment, and date of need.

17 “(ii) The Secretary of Labor shall make such list
18 available for public examination in Washington, D.C.

19 “(C) The Secretary of Labor shall review an attesta-
20 tion filed under this subsection only for completeness and
21 obvious inaccuracies. Unless the Secretary of Labor finds
22 that an attestation is incomplete or obviously inaccurate,
23 the Secretary of Labor shall provide the certification de-
24 scribed in section 101(a)(15)(W)(i)(III) within 7 days of
25 the date of the filing of the attestation.

1 “(3)(A) The Secretary of Labor shall establish a
2 process for the receipt, investigation, and disposition of
3 complaints respecting the failure of an employer to meet
4 a condition specified in an attestation submitted under
5 this subsection or misrepresentation by the employer of
6 material facts in such an attestation. Complaints may be
7 filed by any aggrieved person or organization (including
8 bargaining representatives). No investigation or hearing
9 shall be conducted on a complaint concerning such a fail-
10 ure or misrepresentation unless the complaint was filed
11 not later than 12 months after the date of the failure or
12 misrepresentation, respectively. The Secretary of Labor
13 shall conduct an investigation under this paragraph if
14 there is reasonable cause to believe that such a failure or
15 misrepresentation has occurred.

16 “(B) Under the process described in subparagraph
17 (A), the Secretary of Labor shall provide, within 30 days
18 after the date a complaint is filed, for a determination as
19 to whether or not a reasonable basis exists to make a find-
20 ing described in subparagraph (C). If the Secretary of
21 Labor determines that such a reasonable basis exists, the
22 Secretary of Labor shall provide for notice of such deter-
23 mination to the interested parties and an opportunity for
24 a hearing on the complaint, in accordance with section 556
25 of title 5, United States Code, within 60 days after the

1 date of the determination. If such a hearing is requested,
2 the Secretary of Labor shall make a finding concerning
3 the matter by not later than 60 days after the date of
4 the hearing. In the case of similar complaints respecting
5 the same applicant, the Secretary of Labor may consoli-
6 date the hearings under this subparagraph on such com-
7 plaints.

8 “(C)(i) If the Secretary of Labor finds, after notice
9 and opportunity for a hearing, a failure to meet a condi-
10 tion of paragraph (1)(B), a substantial failure to meet a
11 condition of paragraph (1)(C) or (1)(D), or a misrepresen-
12 tation of material fact in an attestation—

13 “(I) the Secretary of Labor shall notify the Sec-
14 retary of State and the Secretary of Homeland Secu-
15 rity of such finding and may, in addition, impose
16 such other administrative remedies (including civil
17 monetary penalties in an amount not to exceed
18 \$1,000 per violation) as the Secretary of Labor de-
19 termines to be appropriate; and

20 “(II) the Secretary of State or the Secretary of
21 Homeland Security, as appropriate, shall not ap-
22 prove petitions or applications filed with respect to
23 that employer under section 204, 214(c), or
24 101(a)(15)(W) during a period of at least 1 year for
25 aliens to be employed by the employer.

1 “(ii) If the Secretary of Labor finds, after notice and
2 opportunity for a hearing, a willful failure to meet a condi-
3 tion of paragraph (1), a willful misrepresentation of mate-
4 rial fact in an attestation, or a violation of clause (iv)—

5 “(I) the Secretary of Labor shall notify Sec-
6 retary of State and the Secretary of Homeland Secu-
7 rity of such finding and may, in addition, impose
8 such other administrative remedies (including civil
9 monetary penalties in an amount not to exceed
10 \$5,000 per violation) as the Secretary of Labor de-
11 termines to be appropriate; and

12 “(II) the Secretary of State or the Secretary of
13 Homeland Security, as appropriate, shall not ap-
14 prove petitions or applications filed with respect to
15 that employer under section 204, 214(c), or
16 101(a)(15)(W) during a period of at least 2 years
17 for aliens to be employed by the employer.

18 “(iii) If the Secretary of Labor finds, after notice and
19 opportunity for a hearing, a willful failure to meet a condi-
20 tion of paragraph (1) or a willful misrepresentation of ma-
21 terial fact in an attestation, in the course of which failure
22 or misrepresentation the employer displaced a United
23 States worker employed by the employer within the period
24 beginning 90 days before and ending 90 days after the

1 date of filing of any visa petition or application supported
2 by the attestation—

3 “(I) the Secretary of Labor shall notify Sec-
4 retary of State and the Secretary of Homeland Secu-
5 rity of such finding and may, in addition, impose
6 such other administrative remedies (including civil
7 monetary penalties in an amount not to exceed
8 \$35,000 per violation) as the Secretary of Labor de-
9 termines to be appropriate; and

10 “(II) the Secretary of State or the Secretary of
11 Homeland Security as appropriate shall not approve
12 petitions or applications filed with respect to that
13 employer under section 204, 214(c), or
14 101(a)(15)(W) during a period of at least 3 years
15 for aliens to be employed by the employer.

16 “(iv) It is a violation of this clause for an employer
17 who has filed an attestation under this subsection to in-
18 timidate, threaten, restrain, coerce, blacklist, discharge, or
19 in any other manner discriminate against an employee
20 (which term, for purposes of this clause, includes a former
21 employee and an applicant for employment) because the
22 employee has disclosed information to the employer, or to
23 any other person, that the employee reasonably believes
24 evidences a violation of this subsection, or any rule or reg-
25 ulation pertaining to this subsection, or because the em-

1 ployee cooperates or seeks to cooperate in an investigation
2 or other proceeding concerning the employer's compliance
3 with the requirements of this subsection or any rule or
4 regulation pertaining to this subsection.

5 “(v) The Secretary of Labor and the Secretary of
6 Homeland Security shall devise a process under which a
7 nonimmigrant under section 101(a)(15)(W) who files a
8 complaint regarding a violation of clause (iv) and is other-
9 wise eligible to remain and work in the United States may
10 be allowed to seek other appropriate employment in the
11 United States for a period not to exceed the maximum
12 period of stay authorized for such nonimmigrant classi-
13 fication.

14 “(vi)(I) It is a violation of this clause for an employer
15 who has filed an attestation under this subsection to re-
16 quire a nonimmigrant under section 101(a)(15)(W) to pay
17 a penalty for ceasing employment with the employer prior
18 to a date agreed to by the nonimmigrant and the em-
19 ployer. The Secretary of Labor shall determine whether
20 a required payment is a penalty (and not liquidated dam-
21 ages) pursuant to relevant State law.

22 “(II) If the Secretary of Labor finds, after notice and
23 opportunity for a hearing, that an employer has committed
24 a violation of this clause, the Secretary of Labor may im-
25 pose a civil monetary penalty of \$1,000 for each such vio-

1 lation and issue an administrative order requiring the re-
2 turn to the nonimmigrant of any amount paid in violation
3 of this clause, or, if the nonimmigrant cannot be located,
4 requiring payment of any such amount to the general fund
5 of the Treasury.

6 “(vii)(I) It is a failure to meet a condition of para-
7 graph (1)(A) for an employer who has filed an attestation
8 under this subsection and who places a nonimmigrant
9 under section 101(a)(15)(W) designated as a full-time em-
10 ployee in the attestation, after the nonimmigrant has en-
11 tered into employment with the employer, in nonproduc-
12 tive status due to a decision by the employer (based on
13 factors such as lack of work), or due to the non-
14 immigrant’s lack of a permit or license, to fail to pay the
15 nonimmigrant full-time wages in accordance with para-
16 graph (1)(A) for all such nonproductive time.

17 “(II) It is a failure to meet a condition of paragraph
18 (1)(A) for an employer who has filed an attestation under
19 this subsection and who places a nonimmigrant under sec-
20 tion 101(a)(15)(W) designated as a part-time employee in
21 the attestation, after the nonimmigrant has entered into
22 employment with the employer, in nonproductive status
23 under circumstances described in subclause (I), to fail to
24 pay such a nonimmigrant for such hours as are designated

1 on the attestation consistent with the rate of pay identified
2 on the attestation.

3 “(III) In the case of a nonimmigrant under section
4 101(a)(15)(W) who has not yet entered into employment
5 with an employer who has had approved an attestation
6 under this subsection with respect to the nonimmigrant,
7 the provisions of subclauses (I) and (II) shall apply to the
8 employer beginning 30 days after the date the non-
9 immigrant first is admitted into the United States, or 60
10 days after the date the nonimmigrant becomes eligible to
11 work for the employer in the case of a nonimmigrant who
12 is present in the United States on the date of the approval
13 of the attestation filed with the Secretary of Labor.

14 “(IV) This clause does not apply to a failure to pay
15 wages to a nonimmigrant under section 101(a)(15)(W) for
16 nonproductive time due to non-work-related factors, such
17 as the voluntary request of the nonimmigrant for an ab-
18 sence or circumstances rendering the nonimmigrant un-
19 able to work.

20 “(V) This clause shall not be construed as prohibiting
21 an employer that is a school or other educational institu-
22 tion from applying to a nonimmigrant under section
23 101(a)(15)(W) an established salary practice of the em-
24 ployer, under which the employer pays to nonimmigrants
25 under section 101(a)(15)(W) and United States workers

1 in the same occupational classification an annual salary
2 in disbursements over fewer than 12 months, if—

3 “(aa) the nonimmigrant agrees to the com-
4 pressed annual salary payments prior to the com-
5 mencement of the employment; and

6 “(bb) the application of the salary practice to
7 the nonimmigrant does not otherwise cause the non-
8 immigrant to violate any condition of the non-
9 immigrant’s authorization under this Act to remain
10 in the United States.

11 “(VI) This clause shall not be construed as super-
12 seding clause (viii).

13 “(viii) It is a failure to meet a condition of paragraph
14 (1)(A) for an employer who has filed an attestation under
15 this subsection to fail to offer to a nonimmigrant under
16 section 101(a)(15)(W), during the nonimmigrant’s period
17 of authorized employment, benefits and eligibility for bene-
18 fits (including the opportunity to participate in health, life,
19 disability, and other insurance plans; the opportunity to
20 participate in retirement and savings plans; and cash bo-
21 nuses and non-cash compensation, such as stock options
22 (whether or not based on performance)) on the same basis,
23 and in accordance with the same criteria, as the employer
24 offers to United States workers.

1 “(D) If the Secretary of Labor finds, after notice and
2 opportunity for a hearing, that an employer has not paid
3 wages at the wage level specified in the attestation and
4 required under paragraph (1), the Secretary of Labor
5 shall order the employer to provide for payment of such
6 amounts of back pay as may be required to comply with
7 the requirements of paragraph (1), whether or not a pen-
8 alty under subparagraph (C) has been imposed.

9 “(E) The Secretary of Labor may, on a case-by-case
10 basis, subject an employer to random investigations for
11 a period of up to 5 years, beginning on the date on which
12 the employer is found by the Secretary of Labor to have
13 committed a willful failure to meet a condition of para-
14 graph (1) or to have made a willful misrepresentation of
15 material fact in an attestation. The authority of the Sec-
16 retary of Labor under this subparagraph shall not be con-
17 strued to be subject to, or limited by, the requirements
18 of subparagraph (A).

19 “(F) Nothing in this subsection shall be construed
20 as superseding or preempting any other enforcement-re-
21 lated authority under this Act (such as the authorities
22 under section 274B), or any other Act.

23 “(4) For purposes of this subsection:

24 “(A) The term ‘area of employment’ means the
25 area within normal commuting distance of the work-

1 site or physical location where the work of the non-
2 immigrant under section 101(a)(15)(W) is or will be
3 performed. If such worksite or location is within a
4 Metropolitan Statistical Area, any place within such
5 area is deemed to be within the area of employment.

6 “(B) In the case of an attestation with respect
7 to one or more nonimmigrants under section
8 101(a)(15)(W) by an employer, the employer is con-
9 sidered to ‘displace’ a United States worker from a
10 job if the employer lays off the worker from a job
11 that is essentially the equivalent of the job for which
12 the nonimmigrant or nonimmigrants is or are
13 sought. A job shall not be considered to be essen-
14 tially equivalent of another job unless it involves es-
15 sentially the same responsibilities, was held by a
16 United States worker with substantially equivalent
17 qualifications and experience, and is located in the
18 same area of employment as the other job.

19 “(C)(i) The term ‘lays off’, with respect to a
20 worker—

21 “(I) means to cause the worker’s loss of
22 employment, other than through a discharge for
23 inadequate performance, violation of workplace
24 rules, cause, voluntary departure, voluntary re-

1 tirement, or the expiration of a grant or con-
2 tract; but

3 “(II) does not include any situation in
4 which the worker is offered, as an alternative to
5 such loss of employment, a similar employment
6 opportunity with the same employer at equiva-
7 lent or higher compensation and benefits than
8 the position from which the employee was dis-
9 charged, regardless of whether or not the em-
10 ployee accepts the offer.

11 “(ii) Nothing in this subparagraph is intended
12 to limit an employee’s rights under a collective bar-
13 gaining agreement or other employment contract.

14 “(D) The term ‘United States worker’ means
15 an employee who—

16 “(i) is a citizen or national of the United
17 States; or

18 “(ii) is an alien who is lawfully admitted
19 for permanent residence, is admitted as a ref-
20 ugee under section 207 of this title, is granted
21 asylum under section 208, or is an immigrant
22 otherwise authorized, by this Act or by the Sec-
23 retary of Homeland Security, to be employed.”.

24 (c) SPECIAL RULE FOR COMPUTATION OF PRE-
25 VAILING WAGE.—Section 212(p)(1) of the Immigration

1 and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by
2 striking “(n)(1)(A)(i)(II) and (a)(5)(A)” and inserting
3 “(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)”.

4 **SEC. 403. LABOR DISPUTES.**

5 Section 214(j) of the Immigration and Nationality
6 Act (8 U.S.C. 1184(j)) is amended—

7 (1) by striking “(j)” and inserting “(j)(1)”;

8 (2) by striking “this subsection” each place
9 such term appears and inserting “this paragraph”;
10 and

11 (3) by adding at the end the following:

12 “(2) Notwithstanding any other provision of this Act
13 except section 212(t)(1)(B), and subject to regulations
14 promulgated by the Secretary of Homeland Security, an
15 alien who seeks to enter the United States under and pur-
16 suant to the provisions of an agreement listed in sub-
17 section (g)(8)(A), and the spouse and children of such an
18 alien if accompanying or following to join the alien, shall
19 not be classified as a nonimmigrant under subparagraph
20 (E), (L), or (W) of section 101(a)(15) if there is in
21 progress a strike or lockout in the course of a labor dis-
22 pute in the occupational classification at the place or in-
23 tended place of employment, unless such alien establishes,
24 pursuant to regulations promulgated by the Secretary of
25 Homeland Security after consultation with the Secretary

1 of Labor, that the alien's entry will not affect adversely
2 the settlement of the strike or lockout or the employment
3 of any person who is involved in the strike or lockout. No-
4 tice of a determination under this paragraph shall be given
5 as may be required by such agreement.”.